IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-150701 TRIAL NO. B-1505155
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
RASHAUD GREGORY BOWDEN,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a jury trial, defendant-appellant Rashaud Gregory Bowden appeals his conviction and sentence for obstructing justice, in violation of R.C. 2921.32(A)(5). At a routine traffic stop, Bowden told police officers that his passenger was his cousin. The passenger was actually his brother, William Brunner, a fugitive being sought as the perpetrator of a murder.

When stopped by the police, Bowden had been driving a vehicle that belonged to his mother, Angelina Brunner, who lives at 6696 Iris Avenue, in Cincinnati. One officer, wearing a "body cam" video-recording device, spoke to the passenger and observed him at close quarters. The passenger also said that he was Bowden's cousin. He told the officer that the two were coming from 6696 Iris Avenue—"my mama's house." While Bowden was standing outside the vehicle speaking with police, Brunner jumped into the driver's seat and drove away at high speed. Brunner remained at large at the time of trial.

Reviewing police files of known associates of Bowden and his cousin, the investigating officers learned that Brunner was Bowden's brother. After reviewing police and juvenile records, the officers, including the officer who had spoken with Brunner during the traffic stop, identified him as the passenger.

Bowden was then questioned about the incident. A video recording was made of the questioning. Bowden told a detective that his passenger was actually a coworker named Mike. The trial court granted, in part, Bowden's motion to suppress some of his recorded statements. A redacted version of the questioning containing Bowden's statement that "Mike" had been his passenger was played for the jury.

The jury returned a guilty verdict. Following a sentencing hearing, the trial court imposed a 36-month prison term. After making the required findings, the court ordered the sentence to be served consecutively to a prison term that Bowden had been ordered to serve for a prior heroin-trafficking offense.

In his first assignment of error, Bowden challenges the trial court's partial denial of his motion to suppress statements that he had made to the detective. Bowden maintains that he had invoked his right to end questioning when, after about ten minutes of questioning, he told the detective, "I don't want to talk no more."

Any invocation of the right to remain silent must be done unambiguously. *State v. Murphy*, 91 Ohio St.3d 516, 519 747 N.E.2d 765 (2001); *State v. Strong*, 1st Dist. Hamilton Nos. C-100484 and C-100486, 2011-Ohio-4947, ¶ 25. If the accused makes an ambiguous statement regarding the right to cut off questioning, the police are not required to end the interrogation, or to ask clarifying questions about the statement. *Berghuis v. Thompkins*, 560 U.S. 370, 381-382, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010).

Here, the redacted video recording available for our review demonstrates that immediately after Bowden said that he "didn't want to talk," and after the detective stated

simply, "You make zero sense," Bowden willingly continued explaining how his coworker "Mike" had come to be a passenger in the vehicle. It is clear from the context of the recording that Bowden, rather than unambiguously invoking his right to end questioning, continued in an attempt to persuade the detective that someone besides Brunner had been his passenger. Bowden's statement was not an unequivocal assertion of his right to remain silent. *See State v. Rednour*, 2d Dist. Montgomery No. 25135, 2013-Ohio-2125, ¶ 42; *see also Strong* at ¶ 48.

Approximately one and one half minutes later, after the detective had continued to point out inconsistencies in Bowden's narrative, Bowden finally stated, "I don't want to talk no more. I'm done." The detective agreed. "Fair enough. You probably should stop talking now." Pursuant to the trial court's ruling, the redacted video recording does not contain any additional statements from Bowden. We conclude that, until this final statement, Bowden had not unambiguously and unequivocally asserted his right to end questioning. The trial court was justified in denying Bowden's motion in part. *See State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. The first assignment of error is overruled.

Bowden's second assignment of error, in which he argues that the trial court erred in admitting the statements he had made during the interrogation, is not well taken. The admission of relevant evidence—evidence that tends to make a material fact more or less probable—lies within the broad discretion of the trial court, and a reviewing court will not disturb evidentiary decisions in the absence of an abuse of discretion that has created material prejudice. *See* Evid.R. 401; *see also State v. Crawford*, 1st Dist. Hamilton No. C-070816, 2008-Ohio-5764, ¶ 52-53, citing *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, 848 N.E.2d 810, ¶ 62.

Here, Bowden was charged with obstructing justice by making false statements about the identity of his passenger to the police at the traffic stop with the purpose of hindering Brunner's capture. At the scene, Bowden had identified his passenger as his cousin. His subsequent statements to the detective described the traffic stop and offered a different identity for his passenger. The statements were clearly relevant as to whether Bowden had made false statements and the trial court did not abuse its discretion in admitting them. *See Crawford* at ¶ 60. The second assignment of error is overruled.

Bowden next argues that the trial court abused its discretion by overruling his oral motions for a mistrial made when, outside the presence of the jury, the prosecuting attorney spoke briefly with a police officer witness about a police document, and when another police officer, on the witness stand, informed the jury that Bowden was "a very good young man on probation with a job." The decision whether to grant a mistrial lies within the trial court's discretion. The court should declare a mistrial only when the ends of justice so require and when a fair trial is no longer possible. *See State v. Matthews*, 1st Dist. Hamilton Nos. C-060669 and C-060692, 2007-Ohio-4881, ¶ 17.

Here, we cannot say that the trial court abused its discretion in concluding that the prosecuting attorney's brief conversation about a police document with a witness who had completed his cross-examination did not deny Bowden a fair trial. *Compare State v. Anderson*, 191 Ohio App.3d 110, 2010-Ohio-6234, 944 N.E.2d 1224, ¶ 19 (1st Dist.) (holding that the trial court abused its discretion in allowing a witness to be recalled and positively identify the defendant as the perpetrator, after the witness had discussed his testimony with another witness in violation of the trial court's orders).

Similarly, we cannot say that the police officer's brief comment that Bowden was on probation so tainted the proceeding that the trial court abused its discretion in not granting a mistrial. The court did sustain Bowden's objection and issued a limiting

instruction that the jury was to disregard the comment as it was "not relevant to this case." The third assignment of error is overruled.

Bowden next challenges the weight and sufficiency of the evidence adduced to support his conviction. He was convicted under R.C. 2921.31(A)(5), which provides that "[n]o person, with purpose to hinder the * * * apprehension * * * of another for [a] crime * * * shall * * * communicate false information to any person."

Our review of the entire record fails to persuade us that the jury, acting as the trier of fact, clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). The jury was entitled to reject Bowden's theory that he had done nothing to hinder efforts to apprehend Brunner, and that it was his passenger who had given false information to the investigating officers.

The state adduced ample evidence that, at the traffic stop, Bowden had lied to the police about his passenger's identity. The investigating officers identified the passenger as Brunner. As the weight to be given the evidence and the credibility of the witnesses was primarily for the triers of fact to determine, the jury, in resolving conflicts in the testimony, could properly have found that Bowden had falsely identified his passenger with the purpose of hindering his brother's apprehension. *See* R.C. 2921.31(A)(5); *see also State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus.

Moreover, the record reflects substantial, credible evidence from which the court could have reasonably concluded that all elements of the charged crime had been proved beyond a reasonable doubt. *See State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶ 36. The fourth assignment of error is overruled.

In his final assignment of error, Bowden initially claims that the trial court erred as a matter of law by sentencing him without considering the purposes and principles of

felony sentencing under R.C. 2929.11 and 2929.12. But the trial court expressly stated that it had considered the purposes and principles in reaching its sentencing decisions. It engaged Bowden in a meaningful discussion about the seriousness of his actions and that he had committed this offense while he was on community control for the trafficking offense. The court articulated its reasons why a prison term was appropriate. It also made the statutorily required findings necessary for this sentence to be served consecutively to the prior sentence. Thus Bowden has not demonstrated that the trial court failed to consider the purposes and principles of sentencing. *See State v. Buchert*, 1st Dist. Hamilton No. C-160274, 2016-Ohio-7580, ¶ 15.

Finally, Bowden argues that the trial court erred as a matter of law by failing to notify him at sentencing of various matters. We disagree. The trial court was not required to notify Bowden about the detailed consequences of committing a new felony while on postrelease control. *See State v. Smith*, 2012-Ohio-2728, 972 N.E.2d 646, ¶ 5 (1st Dist.). Moreover, the court did not prejudice Bowden by failing to notify him that he would be subject to random drug testing in prison, and that he would be required to submit to DNA testing. *See State v. Taylor*, 1st Dist. Hamilton No. C-150488, 2016-Ohio-4548, ¶ 4-5. The fifth assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DEWINE and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on November 23, 2016
per order of the court _____.
Presiding Judge